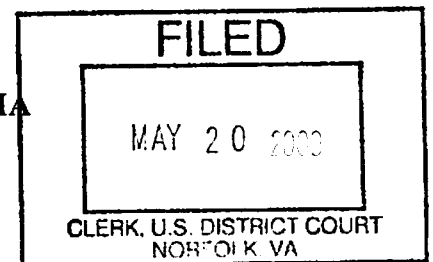


**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



JAY ALLEN BROSCART,

Petitioner,

v.

ACTION NO. 2:08cv264

GENE M. JOHNSON,

Respondent.

FINAL ORDER

On June 9, 2008, identical petitions for writ of habeas corpus pursuant to 28 U.S.C. § 2254 were submitted to this court [Action No. 2:08cv264] as well as to the United States District Court for the Western District of Virginia [Action No. 2:08cv273]. The petitions allege violation of federal rights pertaining to petitioner's convictions following a plea of guilty entered May 6, 2003, in the Circuit Court of Virginia Beach for numerous counts of sexual battery and related offenses, as a result of which he was sentenced to serve eighty-five years in the Virginia penal system. Action No. 2:08cv273 was transferred to this court on June 16, 2008, and both actions are now pending in this court. The two petitions have been merged and consolidated into a single joint petition known as Action No. 2:08cv264.

The petition was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge's Report and Recommendation filed April 24, 2009, recommends dismissal of the petition because the

claim was previously adjudicated by the Virginia Court of Appeals on the merits and denied review by the Virginia Supreme Court and none of the statutory exceptions that would allow this Court to grant relief on the claim apply. The Court has received no objections to the Report and Recommendation and the time for filing objections has expired.

The Court does hereby accept the findings and recommendations set forth in the Report and Recommendation filed April 24, 2009, and it is therefore ORDERED that petition for writ of habeas corpus be DENIED and the Respondent's Motion to Dismiss be GRANTED. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.



Raymond A. Jackson
United States District Judge

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

May 20, 2009